'Pearl Of A Property In A Beautiful Location' Furnished Holiday Lettings Businesses

Julie Butler takes us through the minefield of furnished holiday lets with case law on whether it is a trade or investment for inheritance tax business property relief purposes.

It is fair to say that the vast majority of those involved in the business of furnished holiday accommodation consider the activity to be a hardworking trade and professionals advising the holiday accommodation industry support such a view.

To put the facts in the most straightforward of terms, the provision of holiday accommodation is hard work. From every aspect (e.g. in terms of organisation, services provided and administration) it is a business. It should therefore be eligible for inheritance tax (IHT) business property relief (BPR). Unfortunately, the tax tribunals have taken a different view - a recent case, Green v Revenue & Customs [2015] UKFTT 236 (TC) went against the taxpayer, and in the tribunal's view BPR was not eligible on furnished holiday lets (FHL), i.e. furnished holiday accommodation is not a trade.

'No more than managing an investment property'

The facts of the case were that Mrs Green ran a holiday letting business. The business was Flagstaff House, located on the North Norfolk Coast, which was divided into five self-catering holiday lets. Flagstaff House had a website and a marketing strategy. Mrs Green transferred 85% of the holiday business in two tranches to a settlement and claimed that the transfers qualified for 100% BPR (IHTA 1984, s 103 et seq).

HMRC stated that the transfers were not qualifying because the business of the furnished holiday let consisted mainly of making or holding investments (s 103(3)). To put this into practical terms, HMRC considered the provision of the holiday accommodation based on the facts presented to be the holding of an investment and not a trade. In summary, BPR was disallowed on the basis that the business was mainly of an investment nature (rather than trading).

Although additional services were provided by Mrs Green, such as the provision of a welcome pack, linen and towels, it was held that the value of these did not exceed the value of the services traditionally required to manage an investment property, i.e. the services did not make it a trade. As highlighted by counsel for HMRC, 'guests [were] essentially paying for the right to stay in 'a pearl' of a property in a beautiful location'. HMRC contended that the focus should be on the property rather than the services.

Mrs Green informed the tribunal that some units were let on an assured shorthold tenancy (AST) basis. Mrs Green claimed that the difference in rent between a holiday letting and an assured shorthold tenancy represented the value of the services provided under a holiday let. The tribunal held that the percentage of the rent attributable to those services must be small because the price was mainly a result of the location of the property; guests paid for the right to stay in a beautiful place, not necessarily for the extra services. Here lies a fundamental problem in the tax arguments that advance the proposition that furnished holiday accommodation should qualify for BPR. Currently AST can achieve such high rents that it can be difficult to secure higher income from the furnished holiday accommodation route.

Comparison with previous cases

The 2015 case of Green included a comparison with the cases of George (IRC v George & Anor [2004] STC 147) and Pawson (HMRC v Lockyer & Anor (as personal representatives of Pawson, dec'd) [2013] UKUT 050 (TCC)). The case includes a useful analysis of the services provided in the context of what the client was paying for.

There are no special IHT rules for furnished holiday accommodation. The question at the root of the tribunal, then, is how FHLs should be treated for the purpose of BPR. There is a need for the taxpayer to show that the activity amounts to a 'business' and, assuming that it does, it must prove that it does NOT amount to a business which consists 'wholly or mainly of making or holding investments' (which is barred from relief under IHTA 1984, s 105(3)). The business must be a trade with a strong supply of services.

The Pawson and Green tribunal cases do have one feature in common, in that neither taxpayer was legally represented before the tribunal during the case. In Pawson, the result before the First-tier Tribunal (which was reversed by the Upper Tribunal – see below) was successful for the FHL to be considered as eligible for BPR. The thought of the 'intelligent businessman' was considered. In the Green case, the result was less helpful. The IHT charge in the Green case arose not as the result of the death of the business owner, but as a result of transfers by her into a lifetime settlement.

The salient features of the Green case are noteworthy. First of all, the starting point adopted by the Tribunal was that suggested by Henderson J, when giving the Upper Tribunal judgement in Pawson, that 'the owning and holding of land in order to obtain an income from it is generally to be characterised as an investment activity'. The tribunal in Pawson then followed the earlier tribunal decision in Best v HMRC [2014] UKFTT 077, using an 'intelligent businessman' test to decide, as a question of fact, whether the activity was an investment; and that the business had to be looked at 'in the round'. The decision does make the prospect of obtaining BPR on an FHL seem an almost impossible task at worst, and a very steep hill to climb whatever the property. However, there are holiday property operations that qualify as a trade (under s 105) and can achieve BPR. Such cases must be well presented in future tribunals and the provision of services must be documented and evidenced.

Location of the owner - living on the property

It is worth drawing attention to the judgement in Green: 'At all times, Mrs Green lived in Woodbridge, Suffolk. The business has a website through which bookings can be made. If a person wishes to stay at the property, but does not use the website, he telephones Mrs Green in Woodbridge to see if the unit is available, and then completes a booking form and sends it to Mrs Green. For the years 2009-2012, the booking form states that the price included 'linen and towels, electricity and cots/highchairs' and went on to say 'please call our caretaker, Glenda Sturman, on [number] if you have any queries regarding your holiday arrangements.''

Many would argue that Green was potentially a very strong case and should have achieved BPR. Some would also argue that with a more forceful presentation it would have been successful for proving the arguments for BPR.

Practical Tip:

In order for an FHL case to succeed for BPR purposes, it will be essential to evidence that the owner is more actively involved than Pawson and Green, and is able to provide convincing documentation. Any appeal of the Green decision will be interesting.

If you have furnished holiday lets and are hoping to achieve IHT relief the position should be reviewed. In reality this case provides further support for the view that for the vast majority of FHLs (even those with multiple units) BPR is unlikely to be available. It is certain that considerable further services, more akin to a guest house or hotel, will be required if relief is to be granted.